

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOLEEN L. COUPE)	
Claimant)	
VS.)	
)	Docket No. 1,018,847
BRYTAM MANUFACTURING, INC.)	
Respondent)	
AND)	
)	
CONTINENTAL WESTERN INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier (respondent) appealed the October 12, 2004 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

This is a claim for an October 24, 2003 low back injury. In the October 12, 2004 Order, Judge Clark found claimant was injured in an accident that arose out of and in the course of her employment with respondent and that respondent had timely notice of claimant's injury. Accordingly, the Judge granted claimant's request for medical benefits.

Respondent contends claimant did not provide timely notice of her accidental injury. Accordingly, respondent requests the Board to reverse the October 12, 2004 Order and to deny claimant's request for benefits.

Conversely, claimant contends the October 12, 2004 Order should be affirmed.

The only issue before the Board on this appeal is whether claimant provided respondent with timely notice of her accidental injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

Claimant worked for respondent as a machinist. According to claimant, on October 24, 2003, she was dumping a container of steel and aluminum into a dumpster when she felt a pull in her back and pain down her legs. Claimant testified she immediately told Jeff Schreiber, shop foreman, she had pulled her back dumping heavy trash and that Mr. Schreiber did not acknowledge claimant. Further, claimant testified the next morning she told Tammy Reed, respondent's president, she had pulled her back lifting and carrying steel chips and that Ms. Reed acted as though she had not heard claimant.

Ms. Reed testified that November 20, 2003, was the date she first became aware claimant was alleging a back injury. Ms. Reed did not recall claimant telling her on October 25, 2003, about a back injury. But Ms. Reed admitted that claimant indicated on November 20, 2003, that claimant thought she had told Ms. Reed about the incident. Mr. Schreiber testified claimant did not notify him of an accident on October 24, 2003.

Exhibits from the October 2004 preliminary hearing include a Preferred Medical Associates injury information form. That form, which noted October 24, 2003, as the date of injury and which was signed by claimant on November 24, 2003, includes the following:

Was carrying out a trash (55 g?) ½ full of alum & steel chips to dumpster[.] [I]t was heavy and strained my back lifting into dumpster. Told supervisor Jeff that day but he didn't say anything. Told Tammy Reed next morning while she was making coffee. She didn't say anything. When I had my review I mentioned about having problems carrying out chips and getting help since I'd strained my back as I'd mentioned. Still no response. On the 21st I asked to go to doctor[.] [S]he filed claim and gave me the OK to go to my Doctor. The previous day I had done some slight bending and it really caused problems.¹

The Judge observed Ms. Reed and Mr. Schreiber testify and, therefore, was in a position to assess their credibility. Judge Clark impliedly found claimant to be a credible witness as he found claimant had provided timely notice of her accident despite adverse testimony from respondent's witnesses.

The Board affirms Judge Clark's finding that respondent had timely notice of claimant's injury. The Workers Compensation Act generally requires notice of an accident to be given within 10 days of its occurrence.² Claimant's testimony, coupled with the November 24, 2003 medical information form, establish it is more probably true that claimant provided respondent with notice of the back injury on the day that it occurred. Accordingly, the October 12, 2004 preliminary hearing Order should be affirmed.

¹ P.H. Trans., Cl. Ex. 1.

² See K.S.A. 44-520.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.³

WHEREFORE, the Board affirms the October 12, 2004 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of December 2004.

BOARD MEMBER

c: Garry L. Howard, Attorney for Claimant
Nathan D. Burghart, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ K.S.A. 44-534a(a)(2).